In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 434

AMADO DURAN CAMPOS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinions of the court of appeals (Pet. App. A) and of the district court (Pet. App. C) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on July 13, 1966 (Pet. App. B). The petition for a writ of certiorari was filed on August 11, 1966. The

jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether there was probable cause for an arrest and incidental search without a warrant.

STATEMENT

Petitioner was convicted in the United States District Court for the Southern District of New York on a one-count indictment charging unlawful receipt of marihuana in violation of 21 U.S.C. 176a (R. 117, 183) and was sentenced to imprisonment for five years (R. 183). On appeal the conviction was affirmed (Pet. App. A).

The issue raised depends on the validity of petitioner's arrest which was challenged by pre-trial motion to suppress evidence obtained (R. 120-121).

Farrell, an agent of the Federal Bureau of Narcotics, testified that on the evenings of July 29 and July 31, 1965, he discussed with one Gonzalez the possibility of having Gonzalez introduce an undercover agent to the person who had told Gonzalez he had 130 pounds of marihuana for sale (R. 3-4, 24, 43). Prior to these meetings Gonzalez had worked for agent Farrell for about one year, during which period he had given information which led to four current investigations, the conviction of a narcotics violator in the state court, the conviction of one Daizi in the federal court, and the arrest of a third individual whose case was pending before the grand jury (R. 8, 110-111).

On each occasion Farrell checked the information furnished by Gonzalez and found it reliable (R. 8-9).

At about 9:00 p.m. on August 2, 1965, Gonzalez told Farrell he had seen the suspect over the weekend and believed that he still had an appreciable amount of marihuana in his possession. Gonzalez said the agents could locate the suspect in the vicinity of 136th Street and Broadway (R. 5). After agents Farrell and Gohde had followed Gonzalez to 134th Street and Riverside Drive, Farrell alighted from the government vehicle and walked over to speak to Gonzalez in his car (R. 5-6). Gonzalez told Farrell he had just met the suspect who said that he still had about 10 or 12 pounds of marihuana for which he had a customer that evening (R. 6-7, 44-45). Gonzalez described the suspect as a male Cuban in his mid-thirties, 5'8" in height and weighing 160 pounds. The suspect was said to be wearing a light colored panama straw hat, a light blue short sleeve sport shirt, dark trousers, a large amount of jewelry, including several rings, a large gold identification bracelet, and a medallion on a large gold chain around his neck. Gonzalez also stated that the suspect was carrying an umbrella and appeared to have been drinking heavily (R. 7-8).

Agents Farrell and Gohde drove to the vicinity of 136th Street and Broadway and parked across the street from the Oceanview Bar (R. 9-10). Agent Klempner kept surveillance on foot (R. 59-60). Almost immediately the agents saw, standing in front of the bar, a man (whom they identified in court as petitioner) who answered the description given by Gonzalez (R. 10-11, 57-58). For about two hours the

agents kept petitioner under surveillance as he walked up and down Broadway looking into various bars and restaurants and returning to the Oceanview Bar (R. 11-14, 58-60). At about 11:30 p.m. petitioner took a taxicab to a telephone booth on the corner of Broadway and 111th Street and made a telephone call (R. 14-16, 61). Petitioner then walked to an apartment house at 601 West 112th Street and, five or ten minutes later, he walked out of the building carrying a large suitcase. At this point he was arrested by agent Farrell and searched. He was taken into the building to the rear lobby where the suitcase was searched by agent Gohde and found to contain four packages of marihuana (R. 16-19, 62-63). The agents testified that persons who deal in large quantities of marihuana often transport it in a suitcase (R. 17, 62).

Gonzalez testified that prior to the date of the hearing he had never seen petitioner and had never given agent Farrell information concerning petitioner (R. 89). Gonzalez testified further that he never told Farrell that he knew someone who had marihuana for sale (R. 91), that he had never given Farrell information of any kind about possible narcotics violators (R. 95), and that he had never been an informant for the Bureau of Narcotics (R. 114).

The district court, in denying the motion to suppress, credited the testimony of agent Farrell as opposed to that of Gonzalez, and held that the arrest and incidental search were valid as based upon probable cause (Pet. App. C.). The court of appeals af-

firmed on the basis of the district court's opinion (Pet. App. A).

ARGUMENT

The courts below properly found that there was probable cause for petitioner's arrest without a warrant and the incidental search of his suitcase in which marihuana was discovered. The reliability of the informer Gonzalez had been established prior to the evening of the arrest since he had given agent Farrell accurate information on a number of occasions over a period of approximately one year—including information which led to the conviction of two narcotics violators. Gonzalez's repudiation, at the hearing on the motion to suppress, of his role as an informer (found false by both courts below) did not negate the fact that agent Farrell had good reason to believe that Gonzalez was telling the truth on the date of the arrest. The statement of a reliable informer can support a finding of probable cause. *Draper* v. *United States*, 358 U.S. 307; *United States* v. *Salgado*, 347 F. 2d 216, 217 (C.A. 2); *United States* v. *Robinson*, 325 F. 2d 391, 394 (C.A. 2).

There is no occasion for this Court to overrule *Draper* or hold it inapposite here. Just as in *Draper*, the information furnished by Gonzalez had always been found "accurate and reliable" (358 U.S. at 313). Although in *Draper* the informer had identified the suspect by name and had described a tan zipper bag he would be carrying, these distinctions are not of controlling importance. Here the complete

description of petitioner and the clothes and ornaments he would be wearing was sufficient for his identification. Though the informer had not stated petitioner would be carrying a suitcase, the agents knew from their police experience that large quantities of marihuana are frequently carried by suitcase.

The decision below is not in conflict with *Jackson* v. *United States*, 353 F. 2d 862 (C.A.D.C.), as petitioner suggests (Pet. 8-9). In *Jackson*, the majority of the court of appeals found the arresting officer's testimony concerning information allegedly obtained from an informer to be flawed with "serious inconsistencies," "contrary to human experience" and "inherently incredible" (353 F. 2d at 866-868). In the instant case, neither of the courts below impugned the credibility of the agent's testimony.

CONCLUSION

For the reasons stated it is respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
ROBERT G. MAYSACK,
Attorneys.

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